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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 In Re:
21 TOYOTA MOTOR CORP.
22 UNINTENDED ACCELERATION
23 MARKETING, SALES PRACTICES,
24 AND PRODUCTS LIABILITY
25 LITIGATION

26 THIS DOCUMENT RELATES TO:
27
28 ALL ECONOMIC LOSS CASES

Case No. 08:10-ML-2151-JVS-FMO

The Honorable James V. Selna

**OBJECTION OF ANGELA C.
BOLES, WAYNE HARRIS, AND
JULIE RAINWATER TO THE
SETTLEMENT AGREEMENT AND
NOTICE OF INTENT TO APPEAR
AT THE FAIRNESS HEARING**

1 Settlement Class Members Angela C. Boles, Wayne Harris, and Julie
2 Rainwater (collectively, “Objectors”), by and through counsel, file this Objection
3 to the proposed settlement in the December 26, 2012 Settlement Agreement [D.E.
4 #3342-1] (“Settlement”) and Notice of Intent to Appear at the Fairness Hearing,
5 and respectfully state as follows:

6 **I. Introduction**

7 At its inception, this case revolved around defective floor mats. To this day,
8 the issue of defective floor mats has gone unresolved. Instead, other issues have
9 been raised and pursued. Co-Lead Class Counsel recently admitted that “[w]e
10 have not resolved the issue of is there a bug’ in the system.” Mike Ramsey, *Toyota*
11 *in \$1.1 Billion Gas-Pedal Settlement*, WALL ST. J. Dec. 27, 2012, at A1 (Exhibit 1).
12 And, regarding the proposed Settlement itself:

13 Although Toyota is steadfast that there were no other problems than
14 those that were covered by recalls, the settlement includes extended
15 warranties on vehicles’ engine-control modules, cruise-control
16 switches, accelerator pedal assemblies, stop-lamp switches and
17 throttle body assemblies. Toyota maintains there are no problems with
these parts.

18 *Id.*

19 Since the beginning of this litigation, Toyota has trumpeted the floor mats it
20 directed consumers to immediately remove from their vehicles as a cause of the
21 unintended acceleration in Toyota vehicles. Yet, consumers who paid \$100 or
22 more for the floor mats—whether as an extra charge or as a part of the base price
23 of the vehicle—receive nothing for the admittedly defective product as part of the
24 proposed Settlement. Toyota should be required to compensate consumers for the
25 defective floor mats and related damages.

26 Accordingly, Objectors respectfully object to the Settlement for the
27 following three reasons:
28

- 1 1) the Settlement fails to compensate Settlement Class Members
- 2 for defective floor mats and related damages;
- 3 2) the proposed Automobile Safety and Education Program
- 4 (Settlement Agreement, ¶ II.A.6, Ex. 15) is an improper initial
- 5 *cy pres* fund that diverts Settlement funds away from
- 6 Settlement Class Members; and
- 7 3) any funds remaining in the Alleged Diminished Value Fund
- 8 (Settlement Agreement, ¶ II.A.2) and/or Cash-In-Lieu-of-BOS
- 9 Fund (Settlement Agreement, ¶ II.A.4) at the close of the
- 10 Settlement should be distributed to identifiable Settlement Class
- 11 Members rather than contributed to the proposed Automobile
- 12 Safety and Education Program as additional *cy pres* funds.

13 These are not minor objections. Consumers who have incurred damages
14 because of defective floor mats and/or the unintended acceleration of Toyota
15 vehicles should recover as much of their losses as possible in an effort to make
16 them whole. Redistributing current and future funds earmarked for the Automobile
17 Safety and Education Program *cy pres* fund, as set forth below, will accomplish
18 this objective.

19 **II. Requirements for Objecting to the Settlement**

20 Under the Court's requirements for objecting to the Settlement set forth in
21 its Preliminary Approval Order [D.E. #3345 at ¶14], Objectors provide the
22 following information in addition to the arguments and legal authority set forth in
23 detail below:

Name, Address, Telephone Number of Objectors	Make, Model Year, and VIN Number of Objectors' Vehicles	Whether Objectors Intend to Appear at the Fairness Hearing	List of Vehicles to which Objection applies	Proof of Purchase, Ownership, or Lessee Status
Angela C. Boles, 4472 Mary Ingles Highway, Cold Spring, KY 41076, (859) 431- 5927	2010 Toyota Camry, 4T1BK3EK3AU108097	Appearance will be made through counsel	2010 Toyota Camry	A copy of Objector Boles' Certificate of Title is attached as Exhibit 2
Wayne Harris, 260 Silverlode Dr., Aspen, CO 81611, (970) 925- 7646	2005 Toyota Tacoma, VIN number unavailable	Appearance will be made through counsel	2005 Toyota Tacoma	Objector Harris sold his 2005 Toyota Tacoma on June 29, 2010
Julie Rainwater, 43 Matt Abbott Dr., North Little Rock, AR 72120, (501) 951-5323	2008 Toyota Tundra, 5TFDV54108X070376	Appearance will be made through counsel	2008 Toyota Tundra	Objector Rainwater owns the vehicle, but proof of purchase is not readily available

III. Statement of Relevant Facts

On November 2, 2009, Toyota announced a voluntary safety recall campaign related to floor mats in certain models of its automobiles. *See Toyota Begins Interim Notification to Owners Regarding Future Voluntary Safety Recall Related to Floor Mats* (Nov. 2, 2009) (Exhibit 3). The recall was announced because the driver's side floor mat could interfere with the accelerator pedal and cause it to get stuck in the wide-open position, thereby resulting in unintended

1 acceleration of the vehicle. Until it could develop a remedy, Toyota instructed
2 owners of affected Toyota and Lexus vehicles to “take out any removable driver’s
3 floor mat and NOT replace it with any other floor mat.” *Id.* (emphasis in original).

4 Consistent with its announcement, and pursuant to the National Traffic and
5 Motor Vehicle Safety Act, Toyota sent letters to its customers (referred to herein as
6 “Interim Notices”) advising them to remove all driver’s side floor mats of affected
7 vehicles. *See Sample Letter to Floor Mat Owners* (Exhibit 4) (“We request that
8 you take out any removable driver’s floor mat and NOT replace it with any other
9 floor mat until the campaign remedy is ready and implemented on your vehicle.”)
10 (emphasis in original). Toyota also confirmed it was “currently developing a
11 campaign remedy,” and would notify consumers when it was ready. *Id.*

12 Toyota subsequently amended the recall campaign to expand the list of
13 included vehicles and model years and announced its plan to “modify or replace
14 the accelerator pedals on the subject vehicles to address the risk of floor mat
15 entrapment.” *See Toyota Amends Recall on Potential Floor Mat Interference with*
16 *Accelerator Pedal* (Jan. 27, 2010) (Exhibit 5). Toyota promised to compensate
17 consumers for the cost of the driver’s side floor mats that Toyota instructed them
18 to remove:

19 Toyota will replace any Toyota all-weather floor mat in a subject
20 vehicle with a newly designed mat, free of charge. For those
21 customers who have the previous design all-weather floor mat but do
22 not need or want the newly designed all-weather floor mat, Toyota
23 will recover the previous design all-weather floor mat and reimburse
its price.

24 *Id.*

25 To date, however, (i) Objectors have not, to their knowledge, received the
26 follow-up correspondence from Toyota pertaining to the driver’s side floor mat
27 recall campaign promised in their Interim Notices, (ii) Toyota has not reshaped or
28 repaired the accelerator pedal in Objectors’ vehicles, and (iii) Toyota has not

1 replaced the driver's side floor mat in Objectors' vehicles or otherwise
2 compensated them for price of the floor mats. Equally important, the proposed
3 Settlement provides no compensation to Objectors and the other Settlement Class
4 Members for the lost use of their driver's side floor mats, the additional wear and
5 tear on their vehicle carpeting resulting from the direct, extended, and unprotected
6 exposure to water, snow, dirt and grit, and/or the expense to clean the carpeting.

7 Compensation for these damages was originally sought in complaints filed
8 by various putative class members—including Objectors Harris and Rainwater—
9 prior to consolidation in this MDL proceeding, but were not pursued by Co-Lead
10 Class Counsel. *See, e.g., Harris v. Toyota Motor Sales, U.S.A., Inc.*, Case No. 10-
11 CV-00460 (D. Colo.); *Rainwater v. Toyota Motor Sales, U.S.A., Inc.*, Case No.
12 4:10-CV-116-WRW (E.D. Ark.).

13 Rather, the proposed Settlement seeks to establish a \$30 million Automobile
14 Safety and Education Program (Settlement Agreement, ¶ II.A.6, Ex. 15)—an initial
15 *cy pres* fund that will be distributed to “university-based automobile/transportation
16 research institutes and an education/information program for automobile drivers.”
17 *Id.* These funds will not be used to compensate Settlement Class Members for the
18 floor mats, lost use of the floor mats, and/or carpet cleaning damages; nor will the
19 funds be distributed to Settlement Class Members as additional compensation via
20 the Alleged Diminished Value Fund (Settlement Agreement, ¶ II.A.2) and/or Cash-
21 In-Lieu-of-BOS Fund (Settlement Agreement, ¶ II.A.4).

22 **IV. Statement of Reasons for Objecting to the Proposed Settlement**

23 Objectors object to the proposed Settlement because of the following
24 deficiencies, all of which are curable by rejecting the proposed Settlement and
25 amending the Settlement Agreement.
26
27
28

1
2 **A. The proposed Settlement fails to compensate Settlement Class**
3 **Members for their floor mats, lost use of their floor mats, and/or**
4 **carpet cleaning expenses and, therefore, should be rejected and**
5 **amended to compensate Settlement Class Members for these**
6 **damages.**

7 It is indisputable that floor mats are at the core of this litigation—the
8 defective driver’s side floor mats were an important part of Toyota’s recall
9 campaign. Co-Lead Plaintiffs’ Counsel acknowledges as much in their
10 Memorandum in Support of Plaintiffs’ Motion for Final Approval of Class Action
11 Settlement. *See* D.E. #3556 at 2 (stating the non-monetary benefits of the
12 settlement “will provide an important safety enhancement that is directly related to
13 the risk of floor mat entrapment in over 6.3 million vehicles Toyota recalled for
14 such a risk.”). Objectors object to the proposed Settlement because it does not
15 compensate Settlement Class Members for the floor mats, the cost of the floor
16 mats, the loss of use of their floor mats, excessive carpet wear and tear, and/or
17 carpet cleaning expenses resulting from the failure of the intended purpose of the
18 floor mats, Toyota’s directive to immediately remove them, and Toyota’s
19 subsequent failure to replace the floor mats in a timely manner and/or replace the
20 floor mats at all.

21 That said, Objectors respectfully suggest that Settlement Class Members be
22 compensated for such damages either by supplementing the proposed Settlement
23 with additional funding and/or using the \$30 million currently allocated to the
24 proposed Automobile Safety and Education Program *cy pres* fund (Settlement
25 Agreement, ¶ II.A.6) to create a Floor Mat Compensation Fund—especially
26 because the proposed Automobile Safety and Education Program *cy pres* fund does
27 not comport with governing law and improperly diverts Settlement funds away
28 from Settlement Class Members. *See* Section IV.C, *infra*. Under the Floor Mat
 Compensation Fund, Settlement Class Members would be compensated for their

1 floor mats in an amount determined by further negotiations and approved by the
2 Court.¹ A Settlement Class Member could submit his or her claim on a simple
3 claim form, verified under penalty of perjury to the best of his or her belief and
4 knowledge.

5 Under a Floor Mat Compensation Fund, Settlement Class Members also
6 could and should be compensated for excessive carpet wear and tear and carpet
7 cleaning expenses. The total amount of each Settlement Class Member's claim for
8 these damages could be supported by receipts or other appropriate documentation
9 and a verification, under penalty of perjury to the best of his or her belief and
10 knowledge, that the Settlement Class Member cleaned or had cleaned his or her
11 vehicle's carpets because of removing the driver's side floor mat at Toyota's
12 direction. In the alternative, in the absence of supporting receipts or
13 documentation, a Settlement Class Member could elect to receive an agreed upon
14 payment of such value the Court deems appropriate, which could be submitted
15 with a verification, under penalty of perjury to the best of his or her belief and
16 knowledge and reasonable supporting information, that the Settlement Class
17 Member cleaned his or her carpet because of removing the driver's side floor mat
18 at Toyota's direction, but no longer possess the receipts evidencing such expenses.

19 **B. Alternatively, the Settlement Agreement's Release and Waiver**
20 **should be amended to carve out and exclude all claims for**
21 **compensation of the price of the floor mats, the purchase of the**
22 **floor mats, lost use of the floor mats, and/or carpet cleaning**
23 **expenses.**

24 While the proposed Settlement does not compensate Settlement Class
25 Members for the price of the floor mats, the purchase of the floor mats, loss of use

26 ¹ Current information is that standard Toyota floor mats cost, per set, approximately \$125–
27 \$300, depending on the make and model of the vehicle, and all weather Toyota floor mats cost
28 approximately \$100–\$110, again depending on the make and model of the vehicle.

1 of the floor mats, and/or carpet cleaning expenses, the proposed Settlement, as
2 written, nevertheless releases these claims. *See* Settlement Agreement, ¶ VI.
3 Accordingly, and in the alternative, should the proposed Settlement not be
4 modified to include a Floor Mat Compensation Fund as stated above, the
5 Settlement Agreement should be amended to carve out and exclude all claims for
6 the price of the floor mats, the purchase of the floor mats, lost floor mat use, and/or
7 carpet cleaning expenses, thereby allowing such claims to survive the proposed
8 Settlement.

9 **C. The proposed Settlement improperly diverts Settlement funds**
10 **from readily identifiable and reachable Settlement Class**
11 **Members to *cy pres* recipients.**

12 Objectors object to the proposed Settlement because the intended
13 Automobile Safety and Education Program is an improper initial *cy pres* fund² that
14 diverts \$30 million of Settlement funds away from Settlement Class Members.
15 Such funds should be distributed directly to Settlement Class Members through a
16 newly-created Floor Mat Compensation Fund (as described above) and/or through
17 one of the other proposed funds created by the Settlement Agreement, rather than
18 directed from the beginning to third parties who have no claims in this litigation.
19 This improper initial *cy pres* should be excised entirely from the proposed
20 Settlement and all funds should be distributed to identifiable Settlement Class
21 Members.

22
23
24 ² The term “*cy pres*” is derived from the Norman French expression *cy pres comme possible*,
25 which means “as near as possible.” *Democratic Cent. Comm. v. Washington Metro. Area Transit*
26 *Comm’n*, 84 F.3d 451, 455 n.1 (D.C. Cir. 1996). The *cy pres* doctrine originated in trusts-and-
27 estates law as a rule of construction used to preserve testamentary charitable gifts that otherwise
28 would fail. “When it becomes impossible to carry out the charitable gift as the testator intended,
the doctrine allows the ‘next best’ use of the funds to satisfy the testator’s intent ‘as near as
possible.’” *Id.* (quoting Natalie A. DeJarlais, Note, *The Consumer Trust Fund: A Cy Pres*
Solution to Undistributed Funds in Consumer Class Actions, 38 HASTINGS L.J. 729, 730 (1987)).

1 **1. The proposed Settlement provides for the creation of an**
2 **impermissible initial *cy pres* fund that diverts Settlement**
3 **funds away from Settlement Class Members.**

4 In a class action settlement, “[t]he *cy pres* doctrine allows a court to
5 distribute unclaimed or non-distributable portions of a class action settlement fund
6 to the ‘next best’ class of beneficiaries.” *Nachshin v. AOL, LLC*, 663 F.3d 1034,
7 1036 (9th Cir. 2011) (citation omitted). *Cy pres* distributions must account for the
8 nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the
9 interests of the silent class members, including their geographic diversity. *Id.*

10 Direct distributions to settlement class members are preferred over *cy pres*
11 distributions. *In re Baby Products Antitrust Litig.*, 708 F.3d 163, 173 (3d Cir.
12 2013). The private causes of action aggregated in this MDL proceeding—as in
13 other class actions—were initiated to allow plaintiffs to recover compensatory
14 damages for their injuries. *Cy pres* distributions imperfectly serve that purpose by
15 substituting for such direct compensation an indirect benefit that is, at best,
16 attenuated and, at worse, illusory. *Id.* (citing *Mirfasihi v. Fleet Mortg. Corp.*, 356
17 F.3d 781, 784–85 (7th Cir. 2004)). *Cy pres* distributions also present a potential
18 conflict of interest between class counsel and their clients because including a *cy*
19 *pres* distribution may increase a settlement fund, and with it, attorneys’ fees,
20 without increasing the direct benefit to the class. *In re Baby Products Antitrust*
21 *Litig.*, 708 F.3d at 173. Where a court fears counsel is conflicted, it should subject
22 the settlement to increased scrutiny. *Id.*

23 That said, *cy pres* is an accepted method of addressing leftover, or residual,
24 funds remaining in a settlement account once all known settlement class members
25 have been made whole. *Cy pres* may be used in class action settlements “where the
26 proof of individual claims would be burdensome or distribution of damages
27 costly.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). Under principles
28 established by the American Law Institute (“ALI”), any leftover funds should first

1 be distributed to known class members; only when it is not economically viable to
2 do so should a court engage in a *cy pres* program:

3 A court may approve a settlement that proposes a *cy pres* remedy even
4 if such a remedy could not be ordered in a contested case. The court
5 must apply the following criteria in determining whether a *cy pres*
6 award is appropriate:

7 (a) If individual class members can be identified through a
8 reasonable effort, and the distributions are sufficiently large to
9 make individual distributions economically viable, settlement
10 proceeds should be distributed directly to individual class
11 members.

12 (b) If the settlement involves individual distributions to class
13 members and funds remain after distributions (because some
14 class members could not be identified or chose not to
15 participate), the settlement should presumptively provide
16 further distributions to participating class members unless the
17 amounts involved are too small to make individual distributions
18 economically viable or other specific reasons exist that would
19 make such further distributions impossible or unfair.

20 (c) If the court finds that individual distributions are not
21 viable based on the criteria set forth in subsections (a) and (b),
22 the settlement may utilize a *cy pres* approach. The court, when
23 feasible, should require the parties to identify a recipient whose
24 interests reasonably approximate those being pursued by the
25 class. If, and only if, no recipient whose interests reasonably
26 approximate those being pursued by the class can be identified
27 after thorough investigation and analysis, a court may approve a
28 recipient that does not reasonably approximate the interests
being pursued by the class.

24 PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.07 (Am. Law. Inst. 2010);
25 *see also In re Checking Account Overdraft Litig.*, Case No. 1:09-MD-02036-JLK,
26 at 2–3 (S.D. Fla. Apr. 15, 2013) (Exhibit 6). The ALI further clarifies in its
27 comments to § 3.07:

1 [A]ssuming that further distributions to the previously identified class
2 members would be economically viable, that approach is preferable to
3 *cy pres* distributions. This Section rejects the position urged by a few
4 commentators that a *cy pres* remedy is preferable to further
5 distributions to class members. . . . This Section takes the view that in
6 most circumstances, distributions to class members better approximate
7 the goals of the substantive laws than distributions to third parties that
8 were not directly injured by the defendant's conduct.

9 PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.07 cmt. b.

10 A *cy pres* distribution, therefore, should take place only when a court cannot
11 distribute settlement funds to known class members. *See In re Checking Account*
12 *Overdraft Litig.*, at 3; *Nachshin*, 663 F.3d at 1038 (“In the context of class action
13 settlements, a court may employ the *cy pres* doctrine to ‘put the *unclaimed fund* to
14 its next best compensation use, *e.g.*, for the aggregate, indirect, prospective benefit
15 of the class.”) (emphasis added) (citing *Masters v. Wilhelmina Model Agency,*
16 *Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) (quoting 2 HERBERT B. NEWBERG & ALBA
17 CONTE, *NEWBERG ON CLASS ACTIONS* § 10:17 (4th ed. 2002))).

18 Similar to the proposed Automobile Safety and Education Program *cy pres*
19 fund in the present Settlement Agreement (¶ II.A.6, Ex. 15), the settlement
20 agreement in *In re Checking Account Overdraft Litigation* skipped over the
21 “distribution to known class members” provided for by the ALI procedures and
22 moved directly to *cy pres* through an “initial *cy pres* program.” *In re Checking*
23 *Account Overdraft Litig.*, at 3. There, the “initial *cy pres* program” set aside 12.5%
24 of the net settlement fund as the estimated amount that would have been paid to the
25 settlement class members who the lawyers estimated were “unidentifiable due to a
26 dearth of adequate banking records.” *Id.* at 3–4. While the settlement agreement
27 allowed for the remainder of the fund to be paid to known settlement class
28 members for whom the parties had adequate data, the 12.5% set aside would go
directly to the *cy pres* fund. *Id.* at 4.

1 The court, however, went on to hold that such a settlement provision did not
2 comply with the ALI principles outlined above, requiring unidentifiable class
3 members' shares of settlement funds to be paid to known settlement class members
4 before any *cy pres* program is enacted. *Id.* In fact, the court changed its mind
5 regarding the *cy pres*, noting that an objector correctly argued at the final fairness
6 hearing that “*cy pres* is intended to be a residual program, what you do with the
7 remainder,” and that this initial pre-distribution of funds was not *cy pres* at all,
8 because the known class members have not yet been made whole. *Id.* (citations
9 omitted).

10 The court ultimately required the 12.5% set aside to be given to known
11 settlement class members ahead of non-party *cy pres* charities, noting that the
12 12.5% set aside “was, and is, not a proper *cy pres* program,” but instead “a
13 diversion of funds that does not comport with the proper procedure for utilizing a
14 *cy pres* program in the distribution of class action settlement funds as outlined by
15 the ALI.” *Id.* at 4–5; *see also Dennis*, 697 F.3d at 865–67 (initial *cy pres* fund
16 comprising \$5.5 million of Kellogg food items to be donated to charities feeding
17 the indigent rejected by the court—albeit for reasons other than ALI class
18 settlement fund distribution principles).

19 Similarly, here, the proposed Automobile Safety and Education Program *cy*
20 *pres* fund in the Settlement Agreement (§ II.A.6) is not a proper *cy pres* program,
21 but is instead a diversion of funds away from Settlement Class Members that does
22 not comport with the proper procedure for utilizing a *cy pres* program in
23 distributing class action settlement funds under the ALI principles and governing
24 case law. It is indisputable that Settlement Class Members are readily identifiable
25 by their vehicle VIN numbers and/or Toyota's internal records, and Co-Lead
26 Plaintiffs' Counsel acknowledge that Settlement Class Members will only receive
27 a percentage of their total damages under the Settlement—and will thus not be
28 made whole. It is also indisputable that it would not be burdensome or costly to

1 distribute additional Settlement funds to known Settlement Class Members with
2 the existing Settlement funds under the current distribution mechanism, as no
3 payments have yet been made.

4 Thus, the \$30 million currently earmarked for the proposed Automobile
5 Safety and Education Program *cy pres* fund, respectfully, should be distributed to
6 Settlement Class Members first—preferably through the creation of a Floor Mat
7 Compensation Fund (as described above).

8 **2. The proposed Settlement improperly diverts residual**
9 **amounts that may remain in the Alleged Diminished Value**
10 **Fund and Cash-In-Lieu-of-BOS Fund to *cy pres* recipients;**
11 **these funds should be distributed directly to Settlement**
12 **Class Members in a further effort to make them whole.**

13 The proposed Settlement provides for the creation of a \$250,000,000
14 Alleged Diminished Value Fund and a \$250,000,000 Cash-In-Lieu-of-BOS Fund.
15 Settlement Agreement, ¶¶ II.A.2, A.4. After payments to eligible Settlement Class
16 Members are made under these provisions, “[t]he remaining amounts will be
17 distributed . . . equally to: (i) reimburse the fees and costs paid by Toyota to the
18 Class Action Settlement Administrator, Settlement Notice Administrator, or any
19 other third-party vendor; and (ii) contribute to the Automobile Safety and
20 Education Program described in Section II(A)(6), below. If the administrative
21 and/or notice costs are fully reimbursed, 100% of the further remaining amounts
22 will be applied to contribute to the Automobile Safety and Education Program [*cy*
23 *pres* fund].” Thus, the possibility exists that tens of millions of dollars or more will
24 remain in one or both of these funds after Class claims and administrative expenses
25 are paid.

26 Any funds remaining in the Alleged Diminished Value Fund and/or Cash-In-
27 Lieu-of-BOS Fund should be distributed to identifiable Settlement Class Members
28 as additional compensation for their losses in a further effort to make them whole

1 and/or through the newly created Floor Mat Compensation Fund.

2 **V. Notice of Intent to Appear at the Fairness Hearing**

3 Objectors hereby give notice of their intent to appear at the Fairness Hearing
4 through counsel.

5 **VI. Conclusion**

6 For all of the foregoing reasons, Objectors respectfully request that the Court
7 enter an order:

8 1) (a) denying final approval of the proposed Settlement in the form
9 before the Court, (b) recommending the parties amend the Settlement Agreement
10 to create a Floor Mat Compensation Fund (as described above) by supplementing
11 the Settlement with additional funding and/or reallocating the \$30 million of
12 Settlement funds initially diverted to the Automobile Safety and Education
13 Program *cy pres* fund, under such terms and in such amounts as the Court deems
14 just and proper, and (c) recommending the parties amend the Settlement
15 Agreement so that any residual funds in the Alleged Diminished Value Fund
16 (Settlement Agreement, ¶ II.A.2) and/or Cash-In-Lieu-of-BOS Fund (Settlement
17 Agreement, ¶ II.A.4) are distributed directly to identifiable Settlement Class
18 Members through these funds and/or the newly created Floor Mat Compensation
19 Fund; or, in the alternative,

20 2) (a) denying final approval of the proposed Settlement in the form
21 before the Court, (b) recommending the parties amend the Settlement Agreement
22 so that the \$30 million of Settlement funds initially diverted to the Automobile
23 Safety and Education Program *cy pres* fund be distributed directly to Settlement
24 Class Members through the Alleged Diminished Value Fund (Settlement
25 Agreement, ¶ II.A.2) and/or the Cash-In-Lieu-of-BOS Fund (Settlement
26 Agreement, ¶ II.A.4) (and/or through some other mechanism), under such terms
27 and in such amounts as the Court deems just and proper, and (c) recommending the
28 parties amend the Settlement Agreement so that any residual funds in the Alleged

Diminished Value Fund (Settlement Agreement, ¶ II.A.2) and/or Cash-In-Lieu-of-BOS Fund (Settlement Agreement, ¶ II.A.4) are distributed directly to identifiable Settlement Class Members through these funds.

3) Should the proposed Settlement not be modified to create a Floor Mat Compensation Fund and program (or similar program as described above), Objectors respectfully request that the Court enter an order denying final approval of the proposed Settlement in the form before the Court until such time as the Release and Waiver in the Settlement Agreement (¶ VI) are amended to carve out and exclude (and therefore preserve) all Settlement Class Members' claims for compensation of the price of the floor mats, the purchase of the floor mats, lost use of the floor mats, and/or carpet cleaning expenses.

4) Objectors request that the Court grant such other and further relief as the Court deems just and proper.

Dated: May 13, 2013

By: /s/ Ben Barnow

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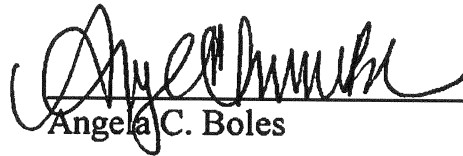
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8 *Wayne Harris, and Julie Rainwater*
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SETTLEMENT CLASS MEMBER SIGNATURE

I, Angela C. Boles, make the foregoing objections to the proposed Settlement in this matter.

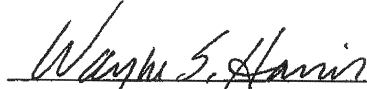
Date: May 13th, 2013


Angela C. Boles

SETTLEMENT CLASS MEMBER SIGNATURE

I, Wayne Harris, make the foregoing objections to the proposed Settlement in this matter.

Date: May 9, 2013


Wayne Harris

SETTLEMENT CLASS MEMBER SIGNATURE

I, Julie Rainwater, make the foregoing objections to the proposed Settlement in this matter.

Date: May 9, 2013



Julie Rainwater

CERTIFICATE OF SERVICE

I certify that on May 13, 2013, I caused to be filed and served, via ECF, a copy of the foregoing on all counsel of record in this matter, and an additional copy to be served on the following counsel via email:

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/s/ Ben Barnow

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